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RICHARD M. RIEHL

February 10, 1994

William F. Caton  
Secretary  
Federal Communications Commission  
Washington, D.C. 20554

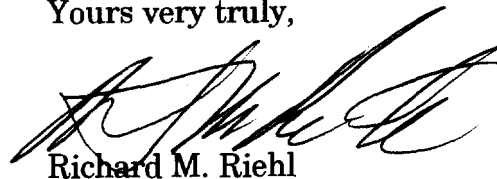
RE: Petition for Rule Making (73.202(b))  
Sanger and Sherman, Texas

Dear Mr. Caton:

On behalf of Durant Broadcasting Corporation please find enclosed an original and four copies of its Petition for Rule Making to re-allocate FM Channel 281 from Sherman to Sanger, Texas; to upgrade the channel at Sanger to Class C3; and to modify the license of Station KWSM(FM) accordingly. For the reasons stated in the Petition for Rule Making, Expedited consideration of this Petition is also requested.

Kindly communicate any questions directly to this office.

Yours very truly,



Richard M. Riehl

Enclosures (5)

RMR/das

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Before The  
**Federal Communications Commission**  
 Washington, D.C. 20554

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In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No.
Table of Allotments	)	RM No.
FM Broadcast Stations,	)	
	)	
Sanger and Sherman	)	
Texas	)	

TO: Chief, Mass Media Bureau

## **PETITION FOR RULE MAKING**

Harmon G. Husbands, Receiver ("Husbands") licensee and proposed Assignor, along with Durant Broadcasting Corporation ("Durant") proposed Assignee (Collectively "Petitioners") of Station KWSM(FM) Channel 281A Denison, Texas, by their attorneys and pursuant to Section 307(b) of the Communications Act and Sections 1.420 (g)(3) and (i) of the Rules, hereby requests the Commission to amend the FM Table of Allotments (Section 73.202(b) of the Rules) as follows:

<b><u>CITY</u></b>	<b><u>PRESENT</u></b>	<b><u>PROPOSED</u></b>
Sanger, Texas	<b><u>NONE</u></b>	281C3 <sup>1</sup>
Denison-Sherman, Texas <sup>2</sup>	244A, 269C3, 281A 285C2	244A, 269C3, 285C2

In support of this request, the following is respectfully submitted:

<sup>1</sup> In order to meet spacing requirements a site restriction at approximately North 33° 25' 10", West 97° 15' 28" is necessary (See Attachment A, p.2).

<sup>2</sup> Denison-Sherman is generally regarded as a single market area. According to Section 73.202(b) of the Rules, 1 FM Station is assigned to Denison-Sherman, 1 is allocated to Denison and 2 are allocated to Sherman.

### **BACKGROUND**

Station KWSM is being acquired by Durant out of receivership. The Station has been unable to survive economically in the Denison-Sherman market and, in fact, went silent on January 5, 1994.

Durant has concluded that changing KWSM's community of license to Sanger, Texas is essential to the station's survival.<sup>3</sup> After consummation of the pending assignment, Durant plans to seek authority for KWSM to remain silent pending reassignment of the facility to Sanger. Re-establishing KWSM in the Sherman-Denison market on a short term basis would be prohibitively expensive and the public interest would be disserved by initiating a new service that shortly would be withdrawn. On these bases, Petitioners ask for expedited consideration of this request so that a service unique to the area and designed to serve the needs and interests of Sanger can be implemented as soon as possible.

### **DISCUSSION**

Section 1.4209(g)(3) and (i) of the Rules authorizes the Table of Allotments to be amended and modification of the license of an FM station to specify a higher class channel and a new community of license where the amended allotment would be mutually exclusive with the present assignment. However, the Commission has emphasized that

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<sup>3</sup> As discussed in more detail *infra.*, there are currently four FM and three AM stations assigned to the Denison-Sherman market. In fact, Channel 269C3 is listed in 73.202(b) as a Denison-Sherman allocation.

such changes in the Table of Allotments must satisfy the objectives of 47 USC § 307(b):

“...To insure that our intent is clear, however, we hereby state unequivocally that Section 1.420(i) was adopted to further the Commission's long standing pursuit of the goals underlying Section 307(b) of the Act, and that any changes in the FM and TV Tables of Allotments must be consistent with those goals.”

*Modification of FM & TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7894, 7895 (1990) on reconsideration (“Recon. Order”). This proposed change in allotments satisfies all of the criteria and objectives.

### **MUTUAL EXCLUSIVITY**

According to Durant's Technical Consultant, Lyndon H. Willoughby, the proposed allocation of Channel 281C3 to Sanger, Texas, is mutually exclusive with the present allocation of the Channel at Sherman, Texas (Attachment A, pp. 1 and 2).<sup>4</sup>

### **307(b) MANDATE IS SATISFIED**

#### **First Local Service for Sanger**

This proposed change in the Table of Allotments will bring Sanger its first local service. Sanger is an incorporated community with a

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<sup>4</sup> Mr. Willoughby's statement is included as Attachment A hereto. Attachment A, Exhibit A, p. 2 reflects a distance of more than 71 kilometers between KWSM's licensed facilities and the suggested Sanger reference point whereas the required spacing between co-channel Class A and C3 allotments is 142 kilometers.

population of 4,000<sup>5</sup>. It has a mayor/city counsel form of government and has its own police department, school system, library and the City Sanger also provides other municipal type services to its residents. (Attachment A, p. 2)

**Six Local Services Will Remain In Denison-Sherman**

There are currently seven stations assigned to the Denison-Sherman market.<sup>6</sup> Allotment of Channel 281C3 to Sanger will leave the following local services:

Community	Call	Chan/Freq	Facility
Denison/Sherman	KDSQ-FM	Ch 269	Class C3
Denison	KDSX(AM)	950 kHz	0.5kw.DA-U
Sherman	KIKM(FM)	Ch 244	Class A
Sherman	KTCY(FM)	Ch 285	Class C2 *
Sherman	KXEB(AM)	910 kHz	1.0kw.DA-U
Sherman	KJIM(AM)	1500 kHz	1.0kw.DA-D

\* A proceeding to allocate Channel 285C2 to Pilot Point, Texas is pending.

Attachment A, p. 2-3.

<sup>5</sup> Attachment A p. 2

<sup>6</sup> Denison and Sherman are contiguous communities and are regarded locally and by Arbitron as a single market. The Commission has also long recognized these communities as a single entity for allocation purposes. See, 4 FCC Rcd 8147 (MMB 1989) and 5 FCC Rcd 6653 (1990) (The initial allocation of Channel 269 was to Denison-Sherman).

**Section 307(B) Mandates The Sanger Allotment**

In emphasizing that every proposed change in the community of license in the Table of Allotments must satisfy the mandate of 307(b) of the Act, the Commission concluded that:

"... provision of a first local service is the highest of our allotment priorities which remains in any significant degree unsatisfied."

*Recon. Order*, 5 FCC at 7896, para. 16. This proposed change in the Table satisfies this highest of current priorities while leaving Denison-Sherman with no fewer than five stations and Sherman, if viewed separately, with three full time stations and one daytime only station. Finally, it is also worth noting that this is not a case of attempting to move an allotment closer to a nearby urban area. This proposal is to move the allotment more than 71 kilometers away from the Denison-Sherman MSA.

**CONCLUSION**

The foregoing establishes that the requirements of Sections 1.420(g)(3) and (i) of the Rules are satisfied and that this requested change in the Table of Allotments will further the objectives of Section 307(b) of the Act. The Commission is therefore requested to issue a

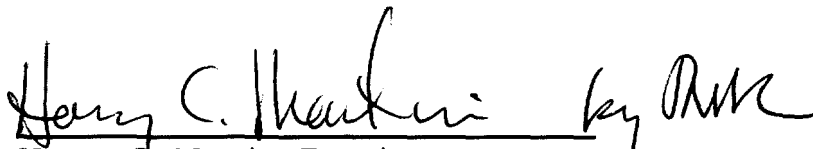
Notice of Proposed Rule Making to change the Table of Allotments (73.202(b) of the Rules) as follows:

<u>CITY</u>	<u>PRESENT</u>	<u>PROPOSED</u>
Sanger, Texas	<u>NONE</u>	281C3 <sup>7</sup>
Denison-Sherman, Texas <sup>8</sup>	244A, 269C3, 281A 285C2	244A, 269C3, 281A

and to modify the license of Station KWSM to specify Sanger, Texas as its licensed community and authorize Class C3 operation on that allocation. In the event this request is granted, either Durant or Receiver will promptly file an application to modify KWSM's existing facilities to comply with the suggested reference point for the allocation of Channel 281C3 at Sanger.<sup>9</sup>

Respectfully submitted,

**HARMON G. HUSBANDS, RECEIVER**

  
Harry C. Martin, Esquire

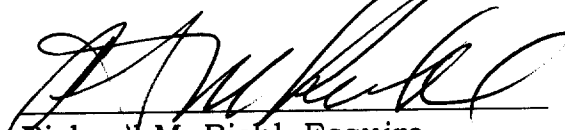
Reddy Begley & Martin  
1001 22nd Street NW, Suite 350  
Washington, D.C. 20036

<sup>7</sup> In order to meet spacing requirements a site restriction at approximately North 33° 25' 10", West 97° 15' 28" is necessary (See Attachment A, p.2).

<sup>8</sup> Denison-Sherman is generally regarded as a single market area. According to Section 73.202(b) of the Rules, 1 FM Station is assigned to Denison-Sherman, 1 is allocated to Denison and 2 are allocated to Sherman.

<sup>9</sup> The suggested reference point and site restriction, North 33° 25' 10", West 97° 15' 28", is necessary to satisfy the separation requirements with Station KVIL (Ch. 279C), Highland-Park/Dallas, Texas; Station KKDA (Ch. 283C), Dallas, Texas; and Station KMGL (Ch. 281C), Oklahoma City, Oklahoma. (Attachment A, p. 2)

**DURANT BROADCASTING CORP.**

A handwritten signature in black ink, appearing to read 'R. M. Riehl', written over a horizontal line.

Richard M. Riehl, Esquire  
Its Attorney

HALEY, BADER & POTTS  
4350 North Fairfax Drive, Suite 900  
Arlington, VA 22203-1633  
703/841-0606

February 10, 1994



**ATTACHMENT A**

**TECNICAL STATEMENT  
IN SUPPORT OF  
PROPOSED RULE MAKING**

ORIGINAL

TECHNICAL STATEMENT IN SUPPORT  
OF PROPOSED RULE MAKING TO  
AMEND §73.202(b), FM TABLE OF ALLOTMENTS

on behalf of  
DURANT BROADCASTING CORPORATION  
KWSM RADIO, CHANNEL 281C3

DECEMBER, 1993

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**WILLOUGHBY & VOSS**  
BROADCAST TECHNICAL CONSULTANTS  
P.O. BOX 701190  
SAN ANTONIO, TEXAS 78270-1190  
(210) 525-1111

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## WILLOUGHBY & VOSS

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### TECHNICAL STATEMENT IN SUPPORT OF PROPOSED RULE MAKING BY DURANT BROADCASTING CORPORATION FOR KWSM CH. 281C3 SANGER, TEXAS

The firm of Willoughby & Voss has been retained by Durant Broadcasting Corporation, regarding KWSM-Sherman, Texas, FCC File No. BLH-891219KB, to prepare the instant technical statement in support of a petition for rule making to amend the FM Table of Allotments by deleting Channel 281A at Sherman, Texas, and assigning Channel 281C3 to Sanger, Texas, as its first local aural service.

1. Section 1.420(i) of the FCC's Rules specify that a proposal to change community of license must result in a preferential arrangement of allotments. A preferential arrangement of allotments results when there is a net service benefit for the communities involved. Modification of FM and TV Authorizations (New Community of License), 66 R.R.2d 877, 882 (1989). As provided by Section 1.420(i), the FCC will not consider competing applications for the use of Channel 281C3 at Sanger, Texas, because the proposed allotment is mutually exclusive with the current allotment of Channel 281A at Sherman, Texas. The proposed change in allotments will not deprive Sherman of its only local FM service. Further, the proposed change in allotments will result in a preferential distribution of facilities under the Commission's FM allotment priorities and policies. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989).

2. The provision of a first local aural service is the Commission's second most important FM allotment priority, co-equal with second aural service, and trails only provision of first aural service, in weight. Revision of FM Assignment Policies and Procedures, 90 F.C.C.2d 88 (1982).

Thus, the allotment of Channel 281C3 at Sanger, Texas, as that community's first local aural service is to be preferred over leaving the channel at Sherman, Texas, as a sixth local aural service (including services licensed to Denison, Texas).

It should be noted that the communities of Sherman and Denison, Texas, are contiguous, and the stations serving one market are considered to be serving both. The Arbitron Rating service combines the two into the Sherman-Denison market and survey area.

3. The reference allotment coordinates for the instant proposed rule making meets all Class C3 distance separation requirements of Section 73.207 of the Commission's Rules. The reference coordinates are:

33 degrees, 25 minutes, 10 seconds North Latitude

97 degrees, 15 minutes, 28 seconds West Longitude

Exhibit A is a tabulation of the allocation study. These reference coordinates are 10.5 km (bearing 130 degrees True), from the Sanger, Texas, community coordinates. This site restriction is necessary to meet the distance separation requirements to KVIL Ch. 279C at Highland Park-Dallas, KKDA Ch.283C at Dallas and KMGL Ch. 281C at Oklahoma City, Oklahoma. This proposed facility will serve the entire community of Sanger with the required 3.16 mV/m contour.

4. The community of Sanger, Texas, is an incorporated municipality, having its own Mayor and city council, a police department and provides other services to its residents. The current population of Sanger proper is 4,000, with a trade area population of 10-12 thousand. And the community has had a sustained, compounded annual growth rate of 4.5%, since 1980. Sanger has its own independent school district, library and newspaper. Adoption of this proposal will provide Sanger with "first local aural transmission service". The allotment of Channel 281C3 to Sanger, Texas, will provide the community with a vital outlet for local expression.

5. The instant proposal is mutually exclusive with the present assignment of KWSM-FM to Sherman, Texas. The deletion of Channel 281A at Sherman, will still leave that community with five local services, two FM and three AM assignments.

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## WILLOUGHBY & VOSS

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1. KDSX(AM) 950 kHz, Denison-Sherman
2. KDSQ(FM) 269A, Denison-Sherman
3. KIKM(FM) 244A, Sherman
4. KJIM(AM) 1500 kHz, Sherman
5. KXEB(AM) 910 kHz, Sherman

The KWSM licensed facility serves 82,608 persons within its 1,820 sqkm 60 dBu service area. The proposed KWSM facility will serve 163,590 persons within its 4,741 sqkm 60 dBu service area. The proposed facility will provide service to 98% more population and increase the land area by 2.6 times over the present licensed facility.

6. In light of the above facts, the desire of the Commission for improved service to the public and efficient spectrum usage, it is requested that the Table of Allotments contained in Section 73.202(b) of the Commission's Rules be amended to read as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Sherman, TX	244A, <u>281A</u>	244A
Sanger, TX	none	<u>281C3</u>
Sherman-Denison, TX	269A	269A

Upon allotment of the above requested changes, formal application for the respective facility will be filed with the FCC.

### CERTIFICATION

The foregoing was prepared on behalf of Durant Broadcasting Corporation, by, or under the immediate supervision of Lyndon H. Willoughby, of Willoughby & Voss, San Antonio, Texas. The affiant's qualifications are contained in previous filings and are a matter of record with the Federal Communications Commission.

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WILLOUGHBY & VOSS

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The statements and data contained herein are true and correct of his own knowledge, except as to statements made on information and belief and as to those statements, he believes them to be true and correct.

December 13, 1993

By   
Lyndon H. Willoughby, Affiant

Technical Consultant to:  
Durant Broadcasting Corporation

# WILLOUGHBY & VOSS

## DISTANCE SEPARATION STUDY

FM Channel Study for Channel 281C3 at 33-25-10 97-15-28  
 Safe Distance of 25.0 Kilometers  
 New (6 kW) Class A spacings employed

\*\*\*\*\* STANDARD DISCLAIMER APPLIES \*\*\*\*\*

Channel Call Applicant/Licensee	City	State	Lat Long	Distance Bearing	Reqr'd Clear
227C2	VACANT	Haltom City			
			, TX 32-52-38	60.17	17.0
			0.00 kW OM 97-14- 5	177.95	43.17
227C2 NEW Melanie Bruton	APP	Haltom City	, TX 32-54-44	56.62	17.0
			50.00 kW 84M 97-11-18	173.41	39.62
227C2 NEW Prairie Broadcasting, Inc.	APP	Haltom City	, TX 32-54-36	56.50	17.0
			50.00 kW 118M 97-15- 3	179.34	39.50
227D KRSB St. Mark's School of Texas	LIC	Dallas	, TX 32-53-24	72.56	0.0
			0.03 kW 45M 96-48- 3	143.90	
227C2 NEW Hispanic Coalition, Inc.	APP	Haltom City	, TX 32-57-25	57.84	17.0
			50.00 kW 150M 97-32-40	207.61	40.84
227C2 NEW Madalina Broadcasting, Inc.	APP	Haltom City	, TX 32-53- 9	59.41	17.0
			50.00 kW 126M 97-12- 7	174.95	42.41
227C2 NEW Poder Broadcasting, Inc.	APP	Haltom City	, TX 32-55-56	54.04	17.0
			50.00 kW 111M 97-15-20	179.78	37.04
227C2 NEW O'Day Broadcasting, Ltd.	APP	Haltom City	, TX 32-55-30	54.89	17.0
			50.00 kW 106M 97-17- 3	182.58	37.89
227C2 NEW John W. Barger	APP	Haltom City	, TX 32-58- 8	50.12	17.0
			50.00 kW 116M 97-12-57	175.51	33.12
227C2 NEW Jonathan & Mary Lyn Wolfert	APP	Haltom City	, TX 32-54-47	56.17	17.0
			50.00 kW 116M 97-15- 0	179.26	39.17
228D NEW-T Power Du Pree Broadcasting Company	APP	Haltom City	, TX 32-47-51	69.49	0.0
			0.12 kW OM 97-20-55	187.03	
228D NEW-T Power Du Pree Broadcasting Company	APP	Plano	, TX 33- 0-44	63.34	0.0
			0.09 kW OM 96-46-53	135.35	
228D NEW-T Power Du Pree Broadcasting Company	APP	Eufless	, TX 32-48-55	68.19	0.0
			0.09 kW OM 97- 7-20	169.27	
228D NEW-T Power Du Pree Broadcasting Company	APP	Garland	, TX 32-54- 4	78.34	0.0
			0.09 kW OM 96-41-14	137.05	

## DISTANCE SEPARATION STUDY

\*\*\*\*\* STANDARD DISCLAIMER APPLIES \*\*\*\*\*

DURANT BROADCASTING CORPORATION  
EXHIBIT A



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WILLOUGHBY & VOSS

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DISTANCE SEPARATION STUDY

FM Channel Study for Channel 281C3 at 33-25-10 97-15-28  
Safe Distance of 25.0 Kilometers  
New (6 kW) Class A spacings employed

\*\*\*\*\* STANDARD DISCLAIMER APPLIES \*\*\*\*\*

Channel Call	City	State	Lat	Distance	Regrd
Applicant/Licensee			Long	Bearing	Clear
=====					
284C	USED	Burkburnett			
			, TX 34- 5-35	167.75	96.0
			0.00 kW OM 98-52-44	296.89	71.75
284A	VACANT	Antlers			
			, OK 34-13-54	177.82	42.0
			0.00 kW OM 95-36- 6	59.10	135.82
284C	KYYI	LIC	Burkburnett		
Y-104 Broadcasting Company, Inc.			, TX 34- 5-35	167.75	96.0
			100.00 kW 310M 98-52-44	296.89	71.75

## **CERTIFICATE OF SERVICE**

I, Dawn A. Smith, a secretary in the law offices of Haley, Bader & Potts, hereby certify that I have on this 10th day of February 1994, sent copies of the foregoing "PETITION FOR RULE MAKING" by first-class United States mail, postage prepaid, to the following:

\*Mr. Roy J. Stewart  
Chief, Mass Media Bureau  
Federal Communications Commission  
Room 314  
1919 M Street, N.W.  
Washington, D.C. 20554

Waller and Mark, P.C.  
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1777 South Harrison Street  
Denver, CO 80210

Harry C. Martin, Esquire  
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1001 22nd Street, N.W.  
Suite 350  
Washington, D.C. 20037  
Counsel for Harmon G. Husbands, Esquire

  
Dawn A. Smith

\*Hand Delivered